D.B. CIVIL SPECIAL APPEAL (WRIT) NO.510/2006

Bikaner Sahakari Upbhokta & Ors.
Wholesale Bhandar Ltd.
Karamsang & Ors.

VS.

State of Raj.

Date of judgment : 20th September, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HONBLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. M.R. Singhvi for the appellant.
Mr. K.N. Joshi for the respondents.

Heard learned counsel for the parties.

The facts of the case are that the appellant-petitioners, who are the employees of respondent No.4, were being paid their emoluments in terms of resolution of Board of Directors as approved by the General House of the respondent No.4 vide order annex.18 and the resolution was approved by the Registrar on 1.8.1999. By this resolution, the Bhandar has adopted the resolution to extent the pay scale and other emoluments to its employees as per the recommendation of 5th Pay

Commission for the State employees. As a matter of fact, by earlier resolution dated 3.7.1998, the Bhandar has already adopted resolution for extending the pay scale applicable to the State employees from time to time automatically to its employees. In pursuance of the said resolution, the employees were getting the pay and emoluments in the pay scale applicable to the corresponding employees of the State as per the recommendation of the 5th Pay Commission. However, vide impugned order dated 22.12.2004, the implementation of the resolution was withdrawn by the Bhandar on its own motion and directed the recovery of the amount already paid to its employees inter alia on the ground that no directions have been received from the Registrar. This order was challenged by way of S.B. Civil Writ Petition No.103/2005. By order dated 7.1.2005, the operation of the order dated 22.12.2004 was stayed. The author of the order, Bhandar, had not filed any reply nor any application for vacating the interim order was made.

In reply submitted by the State Government

only this much was stated that the recommendation of the 5th Pay Commission shall not apply to the society on their own force. However, the societies have option to take decision with due permission from the Registrar. In the return it was not stated that Registrar has ever denied after the resolution was approved by the Joint Registrar and forwarded to the Registrar before issuance of the impugned order dated 22.12.2004.

The attention was also invited by learned counsel for the appellant to the order passed by the Supreme Court in appeal arising in the case of S.B. Civil Writ Petition No.587/2003 in which an interim order, which was continued for more than a year, was vacated without assigning any reason. The Supreme Court in the appeal while setting the order of the learned Single Judge has restored the interim order passed by the High Court and directed for rehearing the stay petition with further direction that the matter may be placed before some Judge other than the one who has passed the order earlier. The vacating of interim order without assigning any reason was not countenanced.

In the circumstances, it was agreed by the learned counsel for the parties that during the pendency of the writ petition, the ad interim order passed on 7.1.2005 may be restored to be continued until the decision of the writ petition with the request to learned Single Judge for deciding the writ petition itself at an early date.

Ordered accordingly. The appellant shall move an appropriate application for fixing the date before Hon'ble Single Judge.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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